

FILED

AUG 11 2004

JUDGE MARINA GORODEMUS

THE DELACO COMPANY, INC.

Plaintiff,

v.

CENTURY INDEMNITY COMPANY,
INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA, et al.,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY

CIVIL ACTION

DOCKET NO. MID-L-8852-03 (MT)

CASE CODE 267

CASE MANAGEMENT ORDER NO. 4

(DISCOVERY SCHEDULE)

THIS MATTER having been opened by the Court on August 5, 2004 at which time the parties appeared before the Court for a Case Management Conference; and the parties having met and conferred on various discovery issues and scheduling on the same day pursuant to the Court's directive and reached an agreement on the scope of the discovery within the time period prescribed below by the Court, with the exception of paragraph 1 to which Defendants object; and the Court having advised the parties that the litigants shall have a full and fair opportunity to develop evidence on all claims and defenses prior to the trial of this case, summary judgment, or other dispositive relief; and for good cause shown;

1. **IT IS** on this 11 day of August 2004, **ORDERED** that the parties shall complete all discovery within **90 days** of the entry of this Order; and

2. **IT IS FURTHER ORDERED** that the parties shall comply with the following initial schedule and directives below.

3. **Agreed-Upon Narrowing of Defendants' Affirmative Defenses and Plaintiff's Bad Faith Claim**

(a) Each defendant shall advise the Court and all counsel of record in writing on or before **August 13, 2004** of the liability-based (as opposed to quantum/damages-based) affirmative defenses on which it realistically

expects at this time to rely in this matter (in a dispositive motion and/or trial). Defendants do not waive their right to assert any other pled liability-based defenses prior to trial; provided, however, that Defendants are required to: (1) advise the Court and all counsel of record of their intention to rely on any other pled defenses at least 30 days prior to the end of the 90 day discovery period so the parties can properly prepare for trial on those issues; and (2) provide the Court with a good faith basis for any such change in position.

(b) By **August 13, 2004**, Plaintiff shall identify those defendants against which it realistically expects at this time to pursue a bad faith claim. Plaintiff does not waive its right to assert any additional bad faith claims against other defendants prior to trial; provided, however, that Plaintiff must: (1) advise the Court and all counsel of record of its intention to pursue any such additional bad faith claims at least 30 days prior to the end of the 90 day discovery period; and (2) provide the Court with a good faith basis for any such change in position.

4. **Agreed-Upon Limited Written Discovery**

- (a) On or after **August 20, 2004**, the parties may propound limited interrogatories relating exclusively to the "narrowed affirmative defenses" identified pursuant to section (a) above. The parties' responses and/or objections to such discovery shall be due within **30 days** of service; provided however, that the parties shall serve a reasonable number of such interrogatories (and Defendants shall serve consolidated interrogatories on Plaintiff) to avoid any unnecessary duplication, cost and/or burden to all parties to the extent possible.
- (b) On or before **September 15, 2004**, Plaintiff shall produce at Defendants' expense and at a reasonable cost a copy of all "proofs of claims" filed by personal injury/wrongful death claimants in the Delaco bankruptcy proceeding.
- (c) On or before **September 21, 2004**, Plaintiff shall produce at Defendants' expense and at a reasonable cost a copy of all "questionnaires" filed by such personal injury/wrongful death claimants in the Delaco bankruptcy proceeding. Within 7 days thereafter, Plaintiff shall produce at Defendants' expense at a reasonable cost a copy of any of the accompanying medical records.
- (d) Unless otherwise agreed by the parties or ordered by the Court, Defendants shall produce their respective Delaco claims, underwriting and policy files on or before **September 21, 2004**;

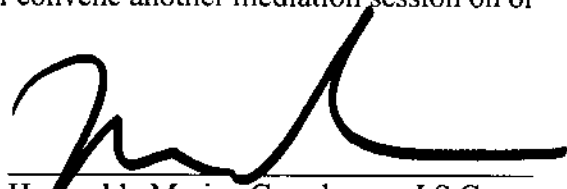
provided however, that Delaco shall advise any high level excess carriers (i.e., higher than an umbrella or first layer excess carrier) by **August 20, 2004** whether such a production is necessary at that time (i.e., prior to the mediation ordered below).

- (e) Plaintiff shall produce at Defendants' expense at a reasonable cost its PPA product liability policy files and its MDL document production on or before **September 21, 2004**.
- (f) The parties must seek leave of court to serve or otherwise seek to take any other written or oral discovery prior the mediation ordered below.

5. **Liaison Counsel/Status Reports to Court**

- (a) Tancred V. Schiavoni, Esq. shall forthwith serve as the defendant insurers' liaison counsel. Messrs. O'Neill and Serlin are hereby relieved of those duties.
- (b) Plaintiff's and Defendants' liaison counsel shall jointly report to the court in writing every thirty days after entry of this Order on the status of the discovery; the parties' mediation and settlement discussions; and any other issues that need attention from the Court in this action.
- (c) If at the conclusion of any 30-day period counsel requests additional time to complete any aspect of this order, they may request the same of the Judge under separate cover or by joint telephone conference through liaison counsel.

6. **Mediation** – The parties shall convene another mediation session on or before **October 15, 2004**.



Honorable Marina Corodemus, J.S.C.

Consented to and agreed by the parties as to form:

McCarter & English, LLP
Counsel for Plaintiff The Delaco Company

O'Melveny & Myers, LLP
Defendants' Liaison Counsel

By: _____
Gregory H. Horowitz
Dated: August 10, 2004

By: _____
Dated: August 10, 2004

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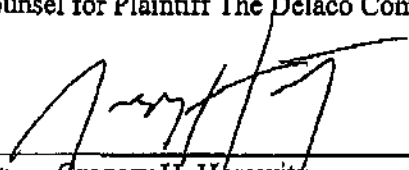
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Counsel for Plaintiff The Delaco Company

O'Melveny & Myers, LLP
Defendants' Liaison Counsel



By: Gregory H. Horowitz
Dated: August 10, 2004

By: Gary Svirsky
Dated: August 10, 2004